Filed 1/3/19 P. v. Meza CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. RUDY MEZA, Defendant and Appellant.	B287203 (Los Angeles County Super. Ct. No. BA453522)

APPEAL from a judgment of the Superior Court of Los Angeles County, David V. Herriford, Judge. Affirmed.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle, and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

At appellant Rudy Meza's sentencing hearing for committing lewd acts with a minor and misdemeanor child molestation, the trial court issued a 10-year protective order that prohibits Meza from having contact with the four children Meza was alleged to have abused in the original six-count information against him. On appeal, Meza argues the trial court lacked the authority to issue the protective order regarding M.P. and D.P., the alleged victims in charges dismissed pursuant to Meza's plea agreement.

We conclude that Meza did not forfeit his jurisdictional challenge to the protective order by failing to object below. We therefore consider Meza's argument that, because M.P. and D.P. are neither victims of the underlying convictions, nor alleged to be victims of domestic violence, they are not "victims" for whose protection a court may issue a post-conviction restraining order under Penal Code[1] section 136.2, subdivision (i)(1) (section 136.2(i)(1)). We do not agree that the section 136.2(i)(1) definition of victim is limited in this way and, accordingly, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

A. *Criminal Information, Plea, and Sentencing*

Meza is a former elementary school teacher. He was initially charged with six counts of sexually-based offenses against four of his students. Counts 1-3 alleged lewd acts against minor K.C., in violation of section 288, subdivision (a); counts 4 through 6 alleged misdemeanor child molestation against R.C., D.P., and M.P., respectively, in violation of section 647.6, subdivision (a)(1). Meza pleaded no contest to counts 1 and 4, and the court dismissed the remaining counts, pursuant to a plea agreement.

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[1] Unless otherwise indicated, all further statutory references are to the Penal Code.

The court sentenced Meza to a total of three years in state prison on count 1, and 364 days in county jail on count 4. The trial court also issued a protective order prohibiting Meza from having contact with any of the four children whom the initial criminal information alleged he had abused. Among the children listed in the protective order were D.P. and M.P., the alleged victims in dismissed counts 5 and 6.

The court read the protective order aloud at the sentencing hearing. Meza did not object. Meza was also personally served a copy of the order at the hearing.

Meza timely appealed the court's order and judgment with respect to "the sentence or other matters occurring after the plea." In his brief on appeal, he asks this court to strike the portions of the protective order regarding D.P. and M.P.

B. *Evidence Regarding D.P. and M.P.*

The evidence related to D.P. and M.P. reflected in the preliminary hearing transcript and police report, to which Meza stipulated as the basis of his plea, is as follows:

Both D.P. and M.P. testified that Meza was their fifth grade teacher. D.P. testified that on one occasion when she asked Meza for help, he tried to touch her breast with his elbow, commented to her that her breasts were growing, and asked her whether she had started her period.

M.P. testified that Meza asked her and other girls "if [they] were on [their] period," which made her feel "weird." M.P. further testified that on one occasion during computer lab when she asked for help, Meza "reached out for the mouse . . . like he kind of went like that so I got scared so I went back." The preliminary hearing transcript does not indicate what gesture accompanied M.P.'s testimony that Meza "went like that."

DISCUSSION

I. Meza Did Not Forfeit His Argument Regarding the Protective Order

An appellant generally forfeits arguments regarding errors to which " ' "an objection could have been, but was not, presented to the lower court by some appropriate method." ' " (*People v. Saunders* (1993) 5 Cal.4th 580, 589-590.) Meza does not dispute that he had the opportunity to object to the protective order and failed to do so. He contends, however, that his argument challenges the court's jurisdiction to issue the protective order, and that such claim cannot be forfeited. We agree.

Meza's appeal challenges the protective order as outside the scope of what section 136.2 authorizes a court to impose. The trial court checked the box indicating section 136.2 as the statutory authority for the challenged order, and the parties have not identified—nor have we found—any other potential statutory basis for it. Thus, if Meza's argument on the merits is correct, the court lacked authority to issue the protective order and imposed an "unauthorized" sentence in excess of the jurisdiction granted it by statute. (See *People v. Ponce* (2009) 173 Cal.App.4th 378, 381-384 (*Ponce*) [court's inherent authority may not be used to issue restraining orders because an "existing body of statutory law regulates restraining orders"].)

Meza's argument does not challenge "the manner in which the trial court exercise[d] its sentencing discretion." (*People v. Scott* (1994) 9 Cal.4th 331, 356 (*Scott*) [holding such complaints cannot be raised for the first time on appeal].) Rather, he challenges whether the court had the authority to issue the protective order at all. (See *Ponce, supra,* 173 Cal.App.4th at pp. 383-384 [noting exceptions to the forfeiture rule for "unauthorized sentences and sentencing decisions that are in excess of the trial court's jurisdiction"].)

Because Meza's failure to object cannot cure a jurisdictional defect or create authority where none otherwise exists, he did not forfeit arguments raising such defects by failing to raise them below. (*See id.* at p. 383 [no forfeiture of argument that protective order exceeded period of time statute authorized]; see also *People v. Robertson* (2012) 208 Cal.App.4th 965, 995-996 [no forfeiture of challenge to no-contact order court issued without statutory authority].)

II. Section 136.2 Authorized the Trial Court to Issue a Protective Order Regarding M.P. and D.P.

On appeal, Meza questions the trial court's interpretation of section 136.2 in issuing the protective order. This is a purely legal issue, which we review de novo. (*People v. Delarosarauda* (2014) 227 Cal.App.4th 205, 210 (*Delarosarauda*).)

Section 136.2 generally provides for restraining orders to protect witnesses and victims during trial[2] (see § 136.2, subd. (a)(1)), but was amended in 2011 to permit postconviction restraining orders in cases involving domestic violence. (Stats. 2011, ch. 155, § 1; *People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 465 (*Beckemeyer*).) In 2013, the Legislature further amended the statute to permit such orders in cases requiring that the defendant register as a sex offender under section 290.

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[2] Specifically, the introductory language in section 136.2, subdivision (a)(1) provides: "Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following." (§ 136.2, subd. (a)(1).) Courts have interpreted section 136.2, subdivision (a)(1) as permitting protective orders only while a criminal action is pending. (See *People v. Stone* (2004) 123 Cal.App.4th 153, 159; *People v. Selga* (2008) 162 Cal.App.4th 113, 118.)

(Stats. 2013, ch. 291, § 1.5, p. 307.) As a result of these amendments, in cases falling into this latter group—which, for ease of reference, we refer to as "section 290 registration cases"—section 136.2(i)(1) grants a trial court the authority to issue an up to 10-year postconviction restraining order that protects any "victim of the crime."[3]

Meza argues that M.P. and D.P. are not "victim[s]" under section 136.2(i)(1), because the counts alleging harm to them were dismissed, and they are neither collateral victims of domestic violence, nor members of Meza's household. For the reasons discussed below, we conclude that M.P. and D.P. are "victims" for the purposes of this statute.

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[3] Section 136.2(i)(1) provides in full: "In all cases in which a criminal defendant has been convicted of a crime [of domestic violence] or a crime that requires the defendant to register pursuant to subdivision (c) of [s]ection 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a victim of the crime. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail or subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and his or her immediate family." (§ 136.2, subd. (i)(1).)

A. *Definition of "Victim" Under Section 136.2(i)(1)*

In construing the meaning of "victim" in section 136.2(i)(1), we "consider the plain, commonsense meaning of the language used in the statute" and "seek to effectuate the legislative intent evinced by the statute," "view[ing] the statutory enactment as a whole." (*Beckemeyer, supra,* 238 Cal.App.4th at p. 465.) This means we " ' "do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' " ' " (*Delarosarauda*, *supra*, 227 Cal.App.4th at p. 210.)

Section 136.2(i)(1) refers only to "a victim of the crime." The chapter in which section 136.2 appears, however, defines "[v]ictim" as "any natural person *with respect to whom there is reason to believe that any crime* as defined under the laws of this state or any other state or of the United States *is being or has been perpetrated or attempted to be perpetrated*." (§ 136, subd. (3), italics added.) We may assume the Legislature was aware of and took into account this broad definition when it amended section 136.2(i)(1) to permit postconviction protective orders for "victim[s]" in both domestic violence cases and section 290 registration cases like Meza's. (See *People v. Harrison* (1989) 48 Cal.3d 321, 329 ["Legislature . . . is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof"]; *Beckemeyer*, *supra*, 238 Cal.App.4th at p. 466 [applying this concept in interpreting "victim" under section 136.2(i)(1)].)

Relying on this statutory history and context, courts have applied the section 136, subdivision (3) (section 136(3)) definition of "victim" to section 136.2(i)(1) protective orders in domestic violence cases. Accordingly, to determine whether the individuals named in a protective order were "victim[s]" properly within the scope of the order, these cases analyzed whether there was

"evidence from which the trial court could reasonably conclude that appellant had harmed or attempted to harm" the individual. (See *Delarosarauda*, *supra*, 227 Cal.App.4th at p. 212; *Beckemeyer, supra*, 238 Cal.App.4th at pp. 466-467.) For example, in *Delarosarauda*, the court considered a protective order issued as part of defendant's sentence for committing a domestic violence offense against his girlfriend. (*Delarosarauda*, *supra*, 227 Cal.App.4th at p. 211.) The order prohibited contact with both the girlfriend and her children. The court applied section 136(3)'s definition of "victim" and concluded that, because "there was no reason to believe that any crime was being or had been perpetrated or attempted to be perpetrated against [the children]" or that defendant "ever attempted to harm them," the protective order exceeded the trial court's authority under section 136.2. (*Delarosarauda*, *supra*, at p. 211.) In *Beckemeyer,* the defendant was convicted of domestic violence offense against his former girlfriend and assault against the former girlfriend's son. (*Beckemeyer, supra*, 238 Cal.App.4th at p. 464.) The court rejected defendant's argument on appeal that, because the son was not in a domestic relationship with defendant, the son was not a victim of *domestic* violence, and that section 136.2(i)(1) therefore did not authorize an order protecting him. (*Beckemeyer, supra*, at pp. 464-465.) Like in *Delarosarauda*, the court relied on the section 136(3) definition of "victim." Under that definition, defendant's conviction for assault against the son provided more than the requisite "reason to believe" defendant had harmed the son, and the protective order was proper. (*Beckemeyer, supra*, at pp. 464-465.)

The Fourth Appellate District recently applied this same analytical framework in a section 290 registration case similar to Meza's. (See *People v. Race* (2017) 18 Cal.App.5th 211 (*Race*).) In so doing, the court also rejected arguments similar to those

Meza raises here. Specifically, in *Race*, the prosecution had initially charged the defendant with lewd and lascivious conduct against his niece and his daughter. (*Id.* at pp. 213-214.) Pursuant to a plea agreement, the defendant pleaded no contest to the charge involving his niece, and the court dismissed the charges involving the defendant's daughter. (*Id.* at pp. 215-216.) At sentencing, the court issued a protective order that restricted the defendant's contact with both his niece and his daughter. (*Id.* at p. 216.) On appeal, the defendant argued that the protective order exceeded the scope of the court's authority under section 136.2, because his daughter was not a victim in the count of which he had been convicted. (*Race, supra,* 18 Cal.App.5th at p. 216.) The court rejected this argument, citing the definition of "victim" under section 136(3) and the domestic violence cases discussed above. (*Race, supra,* at pp. 217-219.) The police report and preliminary hearing transcript contained descriptions of the defendant sexually assaulting his daughter, and these constituted "some competent evidence," from which it was "reason[able] to conclude" the defendant had harmed her. (*Race*, *supra*, at p. 219; see § 136.2, subd. (i)(1).) On this basis, the daughter was a "victim" under section 136.2(i)(1) and the proper subject of a protective order.

Meza argues that section 136(3)'s definition of "victim" should not apply outside the domestic violence context, and that *Race*'s holding is limited to members of the defendant's household.[4] Meza specifically relies on the following language from the *Race* decision: " 'victim' . . . must be construed broadly to include any individual against whom there is 'some evidence' from which the

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[4] Although Meza challenges the applicability of *Race* outside the context of household members, he does not challenge the "some competent evidence" standard *Race* utilized to effectuate section 136(3)'s definition of victim, should we conclude that *Race* applies here.

court could find the defendant ha[s] committed or attempted to commit some harm *within the household*." (*Race, supra,* 18 Cal.App.5th at p. 219, italics added.) Nothing in this language suggests the court was offering an exhaustive description of the *only* types of individuals who might constitute section 136.2(i)(1) "victims." More importantly, nothing about the court's reasoning in *Race* applies only to household members. To the contrary, *Race*—like the cases addressing section 136.2(i)(1) domestic violence protective orders—based its interpretation of the term "victim" on the definition in section 136(3), combined with the language, context, and history of section 136.2(i)(1). That language, context, and history are equally applicable to *all* section 136.2(i)(1) protective orders—including those issued in section 290 registration cases like Meza's—whether or not they involve a household member or domestic violence.

Meza has not identified any legal or policy basis for his argument that the "the dangers . . . the broad interpretation of section 136 were meant to protect against do not exist in this case." Nor does he identify what those dangers are, or why they might exist exclusively in domestic violence situations, given that subdivision (i)(1) is not so limited.

Meza further argues that permitting the protective order covering M.P. or D.P. would "improperly extend the definition of 'victim' in section 136 to include a broad category of people who it has never been applied to before—alleged victims of dismissed counts who are neither members of a defendant's household [n]or even collateral victims of domestic violence." But the definition of "victim" in section 136(3) does not describe any "categories" of individuals who do or do not qualify as "victims." Rather, under section 136(3), whether an individual named in a protective order is a "victim" depends on whether there is reason to believe the defendant harmed or attempted to harm the

individual. We see no basis to apply this definition differently to section 136.2(i)(1) protective orders in section 290 registration cases than we apply it to section 136.2(i)(1) protective orders in domestic violence cases.

Meza does not challenge the sufficiency of the evidence to support implicit findings that M.P. and/or D.P. were "victims" under this definition. Meza raised no such challenge in his briefing and, during oral argument, disavowed any such argument. We may therefore presume the evidence was sufficient to support an implicit finding that M.P. and D.P. were "victims" under section 136.2. (See *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685 ["An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority."]; *Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1345, fn. 6 ["[A]n appellant's failure to raise an issue in its opening brief waives it on appeal."].)

B. *Harvey Waiver*

Finally, Meza suggests that the court improperly relied on the evidence regarding M.P. and D.P. because Meza did not execute a *Harvey*[5] waiver permitting the court to consider uncharged conduct at sentencing. But "in determining whether to issue a criminal protective order pursuant to section 136.2, a court may consider all competent evidence before it," and "is not limited to considering the facts underlying the offenses of which the defendant finds himself convicted, regardless of the execution of a *Harvey* waiver." (*Race, supra*, 18 Cal.App.5th at p. 220.)

The trial court therefore had jurisdiction to issue the protective order with respect to M.P. and D.P.

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[5] *People v. Harvey* (1979) 25 Cal.3d 754, 758.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

CURREY, J.*

* Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.